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No. 94-2074

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

KONIAG, INC., PETITIONER

v.

OMAR STRATMAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that respondent Stratman should be granted relief from judgment under Federal Rule of Civil Procedure 60(b)(6), based on its determination that the earlier settlement of the lawsuit was based on a mutual mistake of fact.

2. Whether the holder of a federal grazing lease on land subject to selection under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, is entitled to actual notice of Native village eligibility proceedings.

3. Whether a recreational user of land subject to selection under ANCSA has standing to challenge a Native village eligibility determination.

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OPINIONS BELOW

The court of appeals' 1994 opinion (Pet. App. 12a-19a) is not published, but the decision is noted at 42 F.3d 1402 (Table). The court of appeals' 1981 opinion (Pet. App. 1a-11a) is reported at 656 F.2d 1321.

JURISDICTION

The first judgment of the court of appeals was entered on September 8, 1981. A petition for rehearing was denied on November 27, 1981. Petitioner filed a petition for a writ of certiorari, but it was

dismissed on joint motion of the parties pursuant to Supreme Court Rule 53.1 (1980),[1] following a settlement between petitioner and respondent Omar Stratman. See 456 U.S. 901 (1982).

The second judgment of the court of appeals, ordering that the case be reopened, was entered on December 5, 1994. A petition for rehearing was denied on February 22, 1995. The petition for a writ of certiorari was filed on May 22, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves a challenge to the Department of the Interior's certification of the village of Woody Island as a Native village eligible to receive land and other benefits under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*

1. ANCSA was enacted in 1971 to accomplish "with certainty," and "without litigation," a "fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. 1601(a) and (b).[2] The Act provided for the distribution of land and money to eligible Native villages and to

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[1] Supreme Court Rule 53.1 (1980) stated as follows:

> Whenever the parties thereto, at any stage of the proceedings, file with the Clerk an agreement in writing that any cause be dismissed, specifying the terms with respect to costs, and pay to the Clerk any fees that may be due, the Clerk, without further reference to the Court, shall enter an order of dismissal.

[2] All citations are to the 1988 edition of the United States Code as supplemented in 1993. As petitioner points out (Pet. 3 n.6), the relevant Sections are substantially identical to the 1976 edition, which was in effect when this lawsuit was initiated.

Native regional corporations, in exchange for which all aboriginal titles and claims were extinguished. See 43 U.S.C. 1601 *et seq.* Each eligible Native village was entitled by the Act to select between approximately 70,000 and 160,000 acres from public lands in the village's vicinity. 43 U.S.C. 1613. The Act provided that the village then would receive a patent to the surface estate of the selected land, and the subsurface estate of the selected land would be patented to the Native regional corporation. *Ibid.* The Act also provided that the residents of each eligible Native village were required to "organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this chapter, except as otherwise provided." 43 U.S.C. 1607(a).

The village of Woody Island, located on a small island in the Kodiak region of Alaska, applied to the Secretary of the Interior for certification as an eligible Native village. Pet. App. 4a; see 43 U.S.C. 1610(b)(3). After investigation and public notice, the Secretary found Woody Island qualified and approved its application. Pet. App. 4a. Leisnoi, Inc., was created as Woody Island's Native village corporation to select lands and to receive cash benefits. *Ibid.* Pursuant to its entitlement under ANCSA, Leisnoi selected its land, some of which partly overlapped land that was subject to a federal grazing leasehold by respondent Omar Stratman, a cattle rancher. *Id.* at 23a.

2. a. In 1976, respondent Stratman and others filed suit against the Secretary in the United States District Court for the District of Alaska, requesting a permanent injunction against the transfer of any

land from the United States to Leisnoi.[3] All the plaintiffs alleged that they used some of the lands for recreational purposes. Some plaintiffs, including Stratman, also alleged harm to their property rights. The plaintiffs contended that Woody Island did not meet ANCSA's requirements to be certified as an eligible Native village. Pet. App. 2a. Leisnoi and the Native regional corporation, Koniag, Inc. (petitioner herein), were joined as necessary parties due to the fact that they would be the recipients of title to the surface estate and the subsurface estate, respectively, upon conveyance by the United States under 43 U.S.C. 1613(f). Pet. App. 20a-21a.

The district court granted the Secretary's motion to dismiss the claims by the recreational plaintiffs for failure to exhaust administrative remedies. Pet. App. 23a-24a. The court refused to dismiss Stratman's claims, however, based on its conclusion that Stratman's record interest as a grazing lease holder entitled him to actual, rather than constructive, notice of Leisnoi's application and made it unnecessary for him to exhaust administrative remedies. *Id.* at 23a, 26a. Leisnoi ultimately relinquished its ANCSA claims to the lands overlapping Stratman's grazing lease, thereby mooting his claims based on economic injury. *Id.* at 5a & n.3; see also *id.* at 25a-

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[3] The action originally challenged the eligibility of two other villages as well, but those claims were separately litigated in a different action. See *Koniag, Inc.* v. *Kleppe*, 405 F. Supp. 1360 (D.D.C. 1975), aff'd in part, rev'd in part, 580 F.2d 601 (D.C. Cir.), cert. denied, 439 U.S. 1052 (1978). Another rancher, Toni Burton, was also a plaintiff when this case was filed, but she has ceased to be involved in the litigation.

29a.[4] The district court then dismissed the case because of the lack of a case or controversy. *Ibid.*

b. Stratman and the other recreational users appealed the dismissal of their claims based on potential injury to their recreational uses. The court of appeals held that all the plaintiffs had standing as recreational users to challenge the village's eligibility. Pet. App. 6a-7a. The court nonetheless affirmed the dismissal of the claims based on recreational use for failure to exhaust administrative remedies. *Id.* at 8a. The court held that Stratman no longer had standing to assert economic interests in the land, see *id.* at 5a n.3, but it reversed the district court's dismissal of Stratman's recreational use claims because Stratman was not given the actual notice to which he was entitled when (prior to Leisnoi's relinquishment of its ANCSA claims to the land) his economic interests were still at issue. The court of appeals therefore remanded the case for consideration of the exhaustion issue as to Stratman. *Id.* at 8a-11a.

c. Koniag filed a petition for a writ of certiorari, but, while the petition was pending, Koniag and Stratman entered into a settlement that became effective in 1')2. Pet. 10; Pet. App. 16a. Koniag agreed to quitclaim to Stratman its interest in 17,637 acres of the land that had been selected by Leisnoi, in exchange for Stratman's agreement to dismiss his lawsuit with prejudice and to pay $233,099.50 for

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[4] Following Stratman's first appeal and the remand, the district court held, as an additional ground for dismissing Stratman's claims, that Stratman had no economic interests to assert because transfers under the ANCSA were subject to valid existing rights, which included whatever property interest Stratman held. See Pet. App. 28a-29a; Pet. 8-9 & n.16.

Koniag's interest in the quitclaimed land. Pursuant to the agreement, Stratman's dismissal of the suit took place immediately and this Court granted Koniag's motion under Rule 53.1 (1980) to dismiss its petition for a writ of certiorari. Gov't C.A. Br. 11-12; see *Koniag, Inc.* v. *Stratman*, 456 U.S. 901 (1982). The conveyance of Koniag's interest in the land to Stratman, however, was to occur thirty days after the United States conveyed the lands to Koniag, which had not yet occurred. Gov't C.A. Br. 12.

3. a. More than ten years after the settlement was entered, Stratman filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6), seeking to vacate the 1982 dismissal and to reopen his suit against Koniag, Leisnoi, and the Secretary. Stratman contended that relief under Rule 60(b)(6) was appropriate, alleging that Leisnoi had repudiated the settlement agreement, the settlement agreement had been deemed invalid as to Leisnoi, and Koniag lacked the authority to stipulate to dismissal on behalf of Leisnoi. Pet. App. 36a-38a.

b. Stratman sought to reopen the case because he did not obtain the surface rights to the land identified in the settlement agreement. Stratman was denied the surface rights because the settlement provided that Koniag was to quitclaim its interests in the land to Stratman, but Koniag no longer had any interest in the surface rights; the surface rights instead belonged to Leisnoi, which was not a party to the settlement agreement. Leisnoi had been merged with Koniag at the time of the settlement, but the merger

was later invalidated in state court proceedings[5] and Leisnoi was reconstituted as a separate corporation with the right to receive the surface estate in the lands it had selected under ANCSA. In accordance with ANCSA, 43 U.S.C. 1613(f), on November 21, 1985, the Department of the Interior conveyed patents for the lands selected by Leisnoi. The surface estate was patented to Leisnoi, and the subsurface estate was patented to Koniag. As called for by the settlement agreement, Koniag tendered the quitclaim deed to Stratman. Stratman, however, refused to accept the quitclaim deed because it did not convey the surface estate to the land. Stratman also refused to pay Koniag the $233,099.50 called for by the agreement. Leisnoi refused Stratman's demand that

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[5] After the district court dismissed Stratman's action in 1978, but before the court of appeals reinstated it in 1981, Leisnoi and several other Native villages merged with Koniag, the regional corporation. After Koniag and Stratman began negotiating a settlement in the federal case, a former Leisnoi shareholder filed a derivative suit in state court to set aside the merger of Leisnoi and Koniag. The suit was based on allegations of misrepresentations in the proxy solicitations identical to those in another village's earlier successful challenge to a merger with Koniag. The Leisnoi shareholder sought a temporary restraining order from the state court to prevent Koniag from entering into the settlement with Stratman, but the court denied the restraining order. Pet. App. 38a.

The state court ultimately granted partial summary judgment to the Leisnoi shareholder, holding that the joint proxy statement, which proposed the merger of Leisnoi and other village corporations with Koniag, was misleading. Koniag entered into a court-approved settlement with the Leisnoi shareholder, which provided that the merger was void *ab initio*. See Pet. App. 16a, 39a.

it convey the surface estate to him. Gov't C.A. Br. 13-14.

Before seeking to reopen his federal lawsuit, Stratman filed suit in the Alaska superior court against Leisnoi and Koniag, seeking specific performance of the settlement agreement or, in the alternative, damages against Koniag. The superior court ruled for Stratman, but the Alaska Supreme Court reversed. The court held that because Stratman entered into the settlement agreement with full knowledge of the pending litigation challenging the merger and its possible consequences, he was bound by the doctrine of *lis pendens* to the result of the litigation invalidating the merger *ab initio* and the settlement agreement therefore was not binding on Leisnoi. Pet. App. 15a, 39a; *Leisnoi, Inc.* v. *Stratman*, 835 P.2d 1202 (Alaska 1992).

c. Stratman then returned to federal court. The district court denied his motion to reopen his original lawsuit, holding that because Leisnoi's merger with Koniag had been held void *ab initio*, the merger never occurred, Koniag could not have signed the settlement on Leisnoi's behalf, and Leisnoi could not be found to have repudiated an agreement it did not sign. Pet. App. 38a-40a. The court rejected Stratman's contention that Koniag lacked authority to stipulate to dismissal of the case on Leisnoi's behalf because the action had been dismissed by the court on Stratman's own motion, not by stipulation. *Id.* at 40a. The court further held that Stratman made a "deliberate and conscious choice" to enter into a settlement in which he might not receive the surface estate to the land, since he was aware of the pending litigation challenging the Koniag-Leisnoi merger,

the shareholder effort to prevent the settlement, and the fact that Leisnoi would regain its land rights if the merger were invalidated. *Id.* at 40a-41a; see note 5, *supra*.

d. The court of appeals reversed, holding that, under Alaska state law governing the interpretation of the settlement agreement, the agreement was not enforceable because the parties were operating under a mutual mistake of fact as to Koniag's authority to convey Leisnoi's land interests. Pet. App. 14a-15a. The court held that the district court abused its discretion in determining that Stratman had made a deliberate choice to ignore the risk that Leisnoi might not be bound to make the conveyance, because Stratman could not have anticipated that Koniag would later enter into a settlement in the demerger litigation that would declare the merger "void ab initio." *Id.* at 16a; see note 5, *supra*. The court of appeals remanded the case to the district court with instructions to vacate the judgment of dismissal and to reopen the litigation. Pet. App. 19a.

ARGUMENT

Petitioner contends (Pet. 11-17) that the court of appeals incorrectly granted relief from judgment under Federal Rule of Civil Procedure 60(b)(6). Petitioner also argues (Pet. 17-27) that Stratman was not entitled to actual notice of the village eligibility proceedings concerning Woody Island in 1974, and asserts (Pet. 27-30) that he does not have standing to maintain the underlying action. Although we believe that the court of appeals erred in various respects, we do not believe that review by this Court is warranted because the case is in an interlocutory posture as a result of the court of appeals' remand to the district

court for further proceedings[6] and because the errors in the decision below are limited in their effects.

1. Petitioner urges review (Pet. 12-14) in order for the Court to exercise its supervisory authority to clarify that if relief from judgment is based on a mutual mistake of fact, relief is available only under Federal Rule of Civil Procedure 60(b)(1), and not under Rule 60(b)(6), on which the courts below relied. Petitioner argues that the Court should resolve an asserted conflict in the courts of appeals concerning the effect on Rule 60(b) motions of state court rulings on the validity of a settlement agreement (Pet. 14-15), and that, in ordering relief from judgment, the court below failed to give full faith and credit to the Alaska Supreme Court's opinion (Pet. 15-17).

We agree with petitioner that the court of appeals erred in applying Rule 60(b)(6) to relieve Stratman of the consequences of his decision to enter into a settlement with Koniag while the litigation challenging the merger of Leisnoi and Koniag was pending. Specifically, the court erred in holding that the settlement was entered into under a mutual mistake of fact and that Stratman did not assume the risk that Koniag's authority to convey Leisnoi's interests could be compromised by the pending litigation. The court of appeals' rulings were in derogation of the Alaska Supreme Court's prior finding that Stratman had "actual knowledge" of the then-pending claims against Koniag and the potential

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[6] See, *e.g.*, *Brotherhood of Locomotive Firemen* v. *Bangor & A.R.R.*, 389 U.S. 327, 328 (1967) (per curiam); *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see also R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice* § 4.18, at 195 (7th ed. 1993).

effects of those claims, and that Stratman's interest in the settlement agreement was therefore "subject to * * * the risk that Koniag's authority over the disputed land would be compromised in the resolution of the demerger litigation." *Leisnoi, Inc.* v. *Stratman*, 835 P.2d at 1209.

Review by this Court is not warranted, however. The court of appeals' opinion purports to distinguish, rather than contradict, the Alaska Supreme Court's prior decision concerning the impact of the settlement agreement. See Pet. App. 15a. Petitioner concedes (Pet. 15 n.28) that the decisions of other courts of appeals that he cites in asserting a circuit conflict regarding the impact of state court rulings on settlement agreements are, in fact, distinguishable, and that "it is unclear how these cases should be applied to the instant case." Moreover, the decision below is inextricably bound up with the unusual factual circumstances of this case, and, as a result, it is of little precedential significance for future Rule 60(b) litigation.

2. Petitioner contends (Pet. 17-25) that the court of appeals erred in 1981 when it held that Stratman was entitled by due process to actual notice of the village eligibility proceedings. In petitioner's view, there was no deprivation of property at stake that gave rise to any notice requirement. Petitioner also challenges (Pet. 26-30) the court's 1981 ruling that Stratman had standing to seek judicial review of the Secretary's determination of a Native village's eligibility under ANCSA, arguing that ANCSA was not enacted for the specific purpose of protecting or conserving natural resources and that ANCSA

provides other means for protecting recreational interests during the land selection process.

We agree with petitioner that the court of appeals erred in holding that Stratman was entitled to actual notice of the village eligibility proceedings. Even if the court of appeals' erroneous ruling would have merited the Court's review in 1981, however, it does not merit review now. ANCSA, enacted in 1971, required that village eligibility determinations be made "within two and one-half years from December 18, 1971." 43 U.S.C. 1610(b)(2) and (3). The process of determining village eligibility concluded in 1974, and all lawsuits challenging the results of that process, except for this one, were resolved by 1981.[7] This is the last pending lawsuit challenging the Secretary's determination of a village's eligibility under ANCSA. A decision by this Court clarifying the rights of interested parties to notice of village eligibility determinations, or determining whether recreational users have standing under ANCSA to challenge village eligibility determinations, would have no application beyond this case.[8]

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[7] There has been more recent litigation concerning the eligibility of native *groups*. See *Chugach Alaska Corp.* v. *Lujan*, 915 F.2d 454 (9th Cir. 1990); *Minchumina Natives, Inc.* v. *United States Dep't of the Interior*, 51 F.3d 220 (1995), as amended on denial of reh'g, No. 93-35841, 1995 WL 423198 (9th Cir. July 18, 1995). Native groups, however, are subject to eligibility procedures different from those that apply to Native villages. Compare 43 C.F.R. 2651.2 (eligibility requirements for native villages) with 43 C.F.R. 2653.6(a) (eligibility requirements for native groups).

[8] We note as well that the Senate recently passed a bill to amend ANCSA that would, *inter alia*, confirm that the Native village of Woody Island is an eligible Alaska Native village

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1995

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under ANCSA and that Leisnoi, Inc., is the village corporation for the village of Woody Island. H.R. 402, 104th Cong., 1st Sess. § 109 (1995); 141 Cong. Rec. S11,343 (daily ed. Aug. 3, 1995).